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*Attorneys for Plaintiff, MORRIS SCHNEIDER
WITTSTADT, LLC*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

MORRIS SCHNEIDER WITTSTADT, LLC, a
Georgia Limited Liability Company,

Plaintiff,

vs.

NEVADA PROPERTY 1 LLC, a Delaware
Limited Liability Company doing business as
THE COSMOPOLITAN OF LAS VEGAS,

Defendant.

CASE NO. 2:15-cv-01175-RFB-VCF

**STIPULATION AND ORDER
GRANTING MORRIS SCHNEIDER
WITTSTADT, LLC LEAVE TO FILE
ITS FIRST AMENDED COMPLAINT**

IT IS HEREBY STIPULATED between Plaintiff Morris Schneider Wittstadt, LLC
("MSW" or "Plaintiff"), and Defendant Nevada Property 1, LLC dba The Cosmopolitan of Las
Vegas ("the Cosmopolitan of Las Vegas" or "Defendant"), by and through their respective
counsel, that MSW may amend its Complaint [Doc. 1] to add Landcastle Acquisition Corp.
("Landcastle") as a plaintiff to this litigation.

MSW has assigned to Landcastle all of MSW's claims involving Nathan E. Hardwick,
IV's (hereinafter "Hardwick") alleged improper transfers of funds from MSW's IOLTA accounts

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1 and other MSW bank accounts to the Cosmopolitan of Las Vegas (the "Claims"). This
 2 assignment permits Landcastle to bring suit in MSW's name when prosecuting the Claims. Due
 3 to this assignment, it is proper to add Landcastle as a plaintiff to the above captioned litigation.

4 The Cosmopolitan of Las Vegas has no personal knowledge of the facts surrounding
 5 MSW's alleged assignment of the Claims to Landcastle and reserves the right to dispute said
 6 assignment. However, the Cosmopolitan of Las Vegas and MSW hereby agree, consent and
 7 stipulate that MSW may amend its Complaint [Doc. 1] to add Landcastle as a plaintiff to this
 8 action.

9 A copy of MSW's proposed First Amended Complaint is attached hereto as **Exhibit 1**.
 10 This stipulation is made in accordance with FED. R. CIV. P. 15(a)(2).

11
 12 Dated this 17th day of September, 2015.

13 **KOLESAR & LEATHAM**

14
 15 /s/ Colby L. Balkenbush

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22 *Attorneys for Plaintiff*
 23 *Morris Schneider Wittstadt, LLC*

Dated this 17th day of September, 2015

**WEINBERG, WHEELER, HUDGINS, GUNN &
 DIAL, LLC**

/s/ D. Lee Roberts

D. LEE ROBERTS, ESQ.
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 6385 S. Rainbow Boulevard., Suite 400
 Las Vegas, Nevada 89118

Attorney for Defendant
Nevada Property 1, LLC dba The Cosmopolitan
of Las Vegas

* * * * *

ORDER

IT IS SO ORDERED:



RICHARD F. BOULWARE, II
 United States District Judge
 DATED this 20th day of September, 2015.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Kolesar & Leatham and that on the 17th day of September, 2015, I caused to be served a true and correct copy of foregoing **STIPULATION AND ORDER GRANTING MORRIS SCHNEIDER WITTSTADT, LLC LEAVE TO FILE ITS FIRST AMENDED COMPLAINT** in the following manner:

(ELECTRONIC SERVICE) Pursuant to Rule 5-4 of the Local Rules of Civil Practice of the United States District Court for the District of Nevada, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by that Court's facilities.


An Employee of KOLESAR & LEATHAM

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EXHIBIT “1”

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MORRIS SCHNEIDER WITTSTADT, LLC,
and LANDCASTLE ACQUISITION, CORP.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

MORRIS SCHNEIDER WITTSTADT, LLC, a
Georgia Limited Liability Company; and
LANDCASTLE ACQUISITION, CORP., a
Delaware Corporation,

Plaintiffs,

vs.

NEVADA PROPERTY 1 LLC, a Delaware
Limited Liability Company doing business as
THE COSMOPOLITAN OF LAS VEGAS,

Defendant.

CASE NO. 2:15-cv-O1175-RFB-VCF

FIRST AMENDED COMPLAINT

Plaintiffs MORRIS SCHNEIDER WITTSTADT, LLC and LANDCASTLE
ACQUISITION CORP. ("Plaintiffs"), by and through their undersigned counsel of record,
hereby complain, alleging as follows:

JURISDICTION AND PARTIES

1. Plaintiff Morris Schneider Wittstadt, LLC (hereinafter the "Firm"), is a Georgia
limited liability company. The Firm's sole member is MHSLAW, Inc., which is a Georgia
corporation with its principal place of business in Georgia. Thus, for purposes of diversity, the
Firm is a citizen of Georgia. At all times relevant herein, the Firm was a law firm whose practice

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1 primarily involved real estate transactions, including real estate closings, foreclosures, and title
 2 insurance.

3 2. Plaintiff Landcastle Acquisition Corp. (hereinafter "Landcastle"), is a Delaware
 4 corporation with its principal place of business in Florida. Thus, for purposes of diversity,
 5 Landcastle is a citizen of Delaware. Landcastle is also a citizen of Florida, its principal place of
 6 business.

7 3. Upon information and belief, Defendant Nevada Property 1 LLC (hereinafter "the
 8 Cosmopolitan") is a Delaware limited liability company. Defendant operates a hotel and casino
 9 on the Las Vegas Strip under the fictitious name "The Cosmopolitan of Las Vegas." Upon
 10 information and belief, the Cosmopolitan is owned by Blackstone Real Estate Partners VII-NQ
 11 L.P., a division of the New York City based Blackstone Group private equity firm. Upon
 12 information and belief, the Cosmopolitan is therefore a citizen of New York. The Cosmopolitan
 13 is also a citizen of Nevada, its principal place of business.

14 4. Jurisdiction is proper in this Court under 28 U.S.C. § 1332(a) because there is
 15 complete diversity of citizenship between Plaintiffs and Defendant, and the amount in
 16 controversy, exclusive of interest, costs, and attorneys' fees, exceeds the sum of \$75,000.00.

17 5. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because a substantial
 18 part of the events giving rise to this action occurred in Nevada.

19 GENERAL ALLEGATIONS

20 6. Nathan E. Hardwick, IV (hereinafter "Hardwick") is a lawyer licensed to practice
 21 law in the State of Georgia. Hardwick was a partner at the Firm and directly oversaw the Firm's
 22 corporate accounting, as well as the financial management and accounting matters for the real
 23 estate closing practice.

24 7. As part of its real estate closing practice, the Firm regularly received funds to be
 25 held in trust and disbursed in accordance with the instructions of the parties to each transaction.
 26 Pursuant to Georgia Bar Rules, these funds were held in properly created Interest on Lawyers
 27 Trust Accounts (hereinafter the "Firm's IOLTA Accounts").

28 8. In early 2012, the Cosmopolitan solicited Hardwick to establish a casino account

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1 at the Cosmopolitan for Hardwick's use while gambling in Las Vegas.

2 9. Hardwick agreed to do so and began wiring funds to the Cosmopolitan.

3 10. The funds Hardwick caused to be wired to the Cosmopolitan were not his own;
4 rather, they were funds Hardwick misappropriated from the Firm's IOLTA Accounts and other
5 bank accounts of the Firm.

6 11. Hardwick caused funds from the Firm's IOLTA Accounts and the Firm's other
7 bank accounts (hereinafter collectively the "Firm's Accounts") to be transferred to the
8 Cosmopolitan's Wells Fargo Bank Account.

9 12. Hardwick caused no fewer than twelve wire transfers to be made from the Firm's
10 Accounts to the Cosmopolitan, with the first transfer taking place on June 29, 2012.

11 13. In total, Hardwick transferred \$3,350,000.00 from the Firm's Accounts to the
12 Cosmopolitan's Wells Fargo Bank Account (hereinafter "the \$3.35 million").

13 14. Hardwick's transfer of the \$3.35 million to the Cosmopolitan was improper and
14 unauthorized.

15 15. The Firm has had no prior business dealings with the Cosmopolitan and owed no
16 money to the Cosmopolitan during the time period during which Hardwick was making the wire
17 transfers from the Firm's Accounts to the Cosmopolitan.

18 16. Were it not for Hardwick's improper and unauthorized wire transfers to the
19 Cosmopolitan, the Firm would never have wired any money from the Firm's Accounts to the
20 Cosmopolitan.

21 17. The Cosmopolitan had no right to retain the \$3.35 million that Hardwick
22 improperly transferred to the Cosmopolitan as such funds were either (1) held in trust by the
23 Firm for the benefit of the Firm's clients or (2) held for the benefit of the Firm itself.

24 18. All of the wire transfers from the Firm's Accounts to the Cosmopolitan contained
25 information that put the Cosmopolitan on notice of the improper nature of the wire transfers and
26 the fact that the Cosmopolitan was not entitled to accept or retain the transferred funds.

27 19. Upon information and belief, the Cosmopolitan was aware of other information,
28 in addition to the information provided through the wire transfers, which put the Cosmopolitan

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1 on notice that the wire transfers from the Firm's Accounts were improper.

2 20. The Cosmopolitan knew and/or should have known that the transfer of the \$3.35
3 million was improper and unauthorized by the Firm.

4 21. Despite having knowledge of the improper nature of the wire transfers from the
5 Firm's Accounts, the Cosmopolitan elected to retain the transferred funds.

6 22. Despite having knowledge of the improper nature of the wire transfers from the
7 Firm's Accounts, the Cosmopolitan allowed Hardwick to withdraw some or all of the funds from
8 his Cosmopolitan account for his personal use and benefit, thus aiding Hardwick in his scheme to
9 defraud the Firm.

10 23. Hardwick's improper transfers of funds to the Cosmopolitan created shortfalls in
11 the Firm's IOLTA Accounts in the amounts that had been so transferred to the Cosmopolitan out
12 of the Firm's IOLTA Accounts, which such shortfalls had to be restored, and were restored, by
13 the Firm in the Firm's IOLTA Accounts in order for the Firm to meet its fiduciary obligations to
14 its clients and continue in operation.

15 24. To enable the Firm to restore all of the shortfalls in the Firm's IOLTA Accounts
16 caused by the improper transfers from such accounts to the Cosmopolitan in order that the Firm
17 could meet its fiduciary obligations to its clients and continue in operation, the Firm entered into
18 an agreement with Landcastle, whereby Landcastle, in exchange for various consideration,
19 provided the funds for the restoration of all of the shortfalls in the Firm's IOLTA Accounts
20 created by the improper transfers from such accounts to the Cosmopolitan.

21 25. An assignment to Landcastle of the Firm's claims involving Hardwick's improper
22 transfers from the Firm's Accounts to the Cosmopolitan (the "Claims") was included as part of
23 that consideration.

24 26. That assignment permits Landcastle to bring suit in the Firm's name when
25 prosecuting the Claims. Thus, Landcastle now stands in the shoes of the Firm and is entitled to
26 raise and prosecute the same causes of action and defenses that the Firm could have raised and
27 prosecuted absent the assignment of the Claims.

28 27. Pursuant to the assignment, the Firm will share in a portion of the funds recovered

1 as a result of the prosecution of the Claims.

2 28. Plaintiffs are entitled to recover the \$3.35 million in funds that Hardwick caused
3 to be improperly transferred to the Cosmopolitan.

4 29. Despite a formal demand that the Cosmopolitan return the \$3.35 million in funds
5 received as a result of the improper wire transfers, the Cosmopolitan has refused to return the
6 \$3.35 million, or any portion thereof, to the Firm or Landcastle

7 **FIRST CLAIM FOR RELIEF**

8 **(Money Had and Received)**

9 30. Plaintiffs repeat and re-allege the allegations previously set forth in above
10 paragraphs 1-29 of this Complaint and incorporate the same by reference as though set forth
11 herein in full.

12 31. The Cosmopolitan received \$3.35 million in funds from the Firm's Accounts that
13 in equity and good conscience the Cosmopolitan should return to Plaintiffs.

14 32. No legal or equitable basis exists that would allow the Cosmopolitan to retain the
15 \$3.35 million.

16 33. Plaintiffs were damaged as a result of the Cosmopolitan's receipt and retention of
17 the \$3.35 million.

18 34. Plaintiffs are entitled to recover all funds improperly wired from the Firm's
19 Accounts that were had and received by the Cosmopolitan (an amount in excess of \$75,000.00),
20 plus any costs, fees or interest associated with pursuing this claim.

21 **SECOND CLAIM FOR RELIEF**

22 **(Unjust Enrichment)**

23 35. Plaintiffs repeat and re-allege the allegations previously set forth in above
24 paragraphs 1-29 of this Complaint and incorporate the same by reference as though set forth
25 herein in full.

26 36. The Firm conferred a substantial benefit upon the Cosmopolitan in the form of the
27 \$3.35 million in funds that were wired from the Firm's Accounts to the Cosmopolitan, for which
28 the Cosmopolitan has not reimbursed Plaintiffs.

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1 the \$3.35 million.

2 49. The Cosmopolitan is a trustee of property belonging to Plaintiffs that is valued at
3 in excess of \$75,000.00, which in equity and good conscience should be returned to Plaintiffs.

4 50. Plaintiffs are also entitled to recover any fees and costs associated with pursuing
5 this claim.

6
7 **FOURTH CLAIM FOR RELIEF**

8 **(Conversion)**

9 51. Plaintiffs repeat and re-allege the allegations previously set forth in above
10 paragraphs 1-29 of this Complaint and incorporate the same by reference as though set forth
11 herein in full.

12 52. The Cosmopolitan committed a distinct act of dominion – wrongfully exerted
13 over the \$3.35 million – which is the Firm’s property.

14 53. The act was in denial of, or inconsistent with, the Firm’s title or rights to the
15 \$3.35 million.

16 54. The act was in derogation, exclusion, or defiance of the Firm’s title or rights to
17 the \$3.35 million.

18 55. Plaintiffs were damaged as a result of the Cosmopolitan’s receipt and retention of
19 the \$3.35 million.

20 56. The Cosmopolitan’s actions have damaged Plaintiffs in an amount in excess of
21 \$75,000.00, plus any costs, fees, or interest associated with pursuing this claim.

22 **FIFTH CLAIM FOR RELIEF**

23 **(Aiding and Abetting the Breach of a Fiduciary Duty)**

24 57. Plaintiffs repeat and re-allege the allegations previously set forth in above
25 paragraphs 1-29 of this Complaint and incorporate the same by reference as though set forth
26 herein in full.

27 58. A fiduciary relationship existed between Hardwick and the Firm.

28 59. Hardwick breached that fiduciary relationship by causing improper and

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1 unauthorized wire transfers to be made from the Firm's Accounts to the Cosmopolitan.

2 60. The Cosmopolitan knowingly aided and abetted Hardwick's breach of fiduciary
3 duty by receiving and retaining the funds improperly wired from the Firm's Accounts and then
4 allowing Hardwick to withdraw some or all of the funds for his personal use and benefit.

5 61. Hardwick's breach of fiduciary duty and the Cosmopolitan's knowing
6 participation in that breach has resulted in damages to Plaintiffs in an amount in excess of
7 \$75,000.00, plus any costs, fees, or interest associated with pursuing this claim.

8 **WHEREFORE**, Plaintiffs pray for judgment as follows:

9 1. For judgment in favor of Plaintiffs and against the Cosmopolitan on all counts
10 asserted herein;

11 2. For actual, compensatory, consequential, and special damages in an amount in
12 excess of \$75,000.00;

13 3. For pre- and post-judgment interest on any money judgment;

14 4. For attorneys' fees and costs incurred by Plaintiffs as a result of bringing this
15 action;

16 5. For a declaration of rights and obligations between the Parties;

17 6. For equitable relief as plead herein; and

18 7. For such other further relief as this Court may deem just and proper.

19 DATED this ____ day of September, 2015.

20 **KOLESAR & LEATHAM**

21
22 By _____

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23 COLBY L. BALKENBUSH, ESQ.

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26 Attorneys for Plaintiff,

27 MORRIS SCHNEIDER WITTSTADT, LLC, and
28 LANDCASTLE ACQUISITION CORP.

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